

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Petition of Texsota
Enterprises, Inc., d/b/a A. Brunell Transfer &
Storage, for Expanded Household Goods
Mover Permit Authority

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for Hearing before Administrative Law Judge Steve M. Mihalchick on April 2, 2004, at the Office of Administrative Hearings, 100 Washington Square, Minneapolis, MN. The hearing record closed at the conclusion of the hearing.

Wayne R. Reeves, Texsota Enterprises, Inc., 2590 Cleveland Avenue North, Roseville, MN 55113, part owner of Applicant Texsota Enterprises, Inc., d/b/a A. Brunell Transfer & Storage (Applicant), appeared pro se.

Douglas B. Bester, Manager and part owner, appeared on behalf of Protestant Bester Brothers Transfer and Storage Company, Inc. (Bester Bros.), 260 Hardman Avenue South, South St. Paul, MN 55075.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Carol Molnau, Commissioner, Minnesota Department of Transportation, 395 John Ireland Boulevard, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Whether the Commissioner should grant Applicant intrastate household goods mover permit authority, which would be an expansion of Applicant's current Minnesota permit authority.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background and Procedural Requirements

1. Wayne Reeves and Ryan Jacobson are co-owners of Texsota Enterprises, Inc., a Minnesota-based moving company providing household, commercial, and freight hauling services.
2. Under Minnesota law, moving companies must apply to the Commissioner of Transportation to obtain household goods mover permit authority within the state.^[1] Moving companies may apply for new authority, an extension of their current authority, or a transfer of authority from another company. Transfer of authority from one company to another is a common practice and generally occurs when a company changes ownership hands.
3. Wayne Reeves worked as Operations Manager for Beltmann North American Van Lines from 1998 to 2001, at which time he was laid off due to massive cutbacks at the company.^[2] Since 2001, his company Texsota has worked continuously providing moving services as an independent contractor for other larger companies, such as Cole Transit Co., Inc. (Cole Transit), d/b/a A. Brunell Transfer Co., and Berger Transfer & Storage (Berger).
4. In September, 2002, Cole Transit contacted Reeves and Jacobson to perform some contract work for their business. Texsota's work for Cole Transit mostly involved household moving, but Texsota also provided commercial and freight hauling services. Reeves and Jacobson supplied their own trucks and equipment. Cole Transit's permit authority to transport household goods was limited to origins in St. Paul and other municipalities contiguous to St. Paul, other than Minneapolis, for transportation to any point or place within 50 miles of the city limits of the City of St. Paul.^[3]

5. At some point after their contractual relationship began, Texsota and Cole Transit discussed a sale of Cole Transit to Texsota. On March 26, 2003, in connection with Texsota's purchase of Cole Transit, Texsota and Cole Transit agreed to transfer Cole Transit's Household Goods Mover Permit Authority to Texsota, and the two companies filed a joint petition with the Department for an Order authorizing and approving the transfer of Household Goods Permit Authority under Minn. Stat. § 221.151, subd. 1.

6. By letter to the Department dated July 15, 2003, Texsota requested the addition of the d/b/a name of A. Brunell Transfer & Storage to their permit authority.

7. In an Order dated August 19, 2003, the Deputy Commissioner made the required statutory analysis under Minn. Stat. § 221.151, subd. 1, finding Texsota fit and able to conduct the operations authorized under the permit, and concluding that there would be no undue adverse effect on either the rights of the users of the service or on competing household goods movers if the petition was granted. The Order granted Texsota, d/b/a A. Brunell Transfer & Storage, Cole Transit's household goods mover permit authority in its entirety with no amendments.

8. On November 19, 2003, Applicant filed with the Commissioner a Petition for an Extension of its Minnesota Intrastate Authority to move household goods.^[4]

9. On November 21, 2003, a Notice of the Petition was published in the Department's Transportation Regulation Proceedings' Notice and Hearing Bulletin. The Notice set a protest date of December 11, 2003.

10. By letter dated December 2, 2003, Bester Bros. filed a Petition to Intervene and Notice of Intent to Appear.

11. On February 13, 2004, the Department issued a Notice of Hearing setting the hearing for March 26, 2004. The Notice listed the protest filed by Bester Bros.

Applicant's Work History and Business Experience

12. Applicant continues to do contract work for Berger in addition to its own business. Most of the work is smaller moves of household goods, involving both pick-up and drop-off services. Applicant stores one tractor, two straight trucks, and two trailers in an 8000 square foot warehouse in Roseville, MN. Midway Truck & Trailer performs the necessary maintenance on the equipment. Applicant has 15 employees, six of which are drivers. When Applicant performs moving services for Berger, Applicant operates under Berger's permit authority and uses Berger's equipment.

13. Applicant's existing customer base is 35% repeat and referral business.^[5] Some of the customers have requested that Applicant expand its permit authority beyond the 50-mile metro area radius. As of November 13, 2003, Applicant's assets totaled \$104,500, liabilities totaled \$87,000, resulting in a total net worth of \$17,500.^[6]

Applicant's Demonstration of Need for Statewide Authority

14. It is a standard business practice for large national van lines to have local agents. The national company may solicit multiple agents within a given locality to get the best response. The local agent will perform household, commercial or freight moving services on an intrastate level. Each local agent uses its own permit authority for intrastate moves and generally assumes responsibility as an agent for only one national company.

15. In November, 2003, Paul Arpin Van Lines (Arpin), based in Rhode Island, approached Applicant to be one of its local service agents for the State of Minnesota. According to Applicant, in January, 2004, the two companies entered into an "agency agreement." However, no such agreement was presented at the hearing. Arpin has two other small Minnesota agents located in Fergus Falls and Austin, and the extent of their permit authority is unknown. Arpin estimated that it could offer Applicant intrastate business totaling between \$75,000 and \$125,000, in the first year. Boston Scientific and Pfizer Pharmaceutical Company are two of Arpin's big intrastate clients.

16. Applicant received the following letter from Arpin, dated March 31, 2004:

Dear Wayne,

Please allow this to serve as a letter of support regarding your application for Minnesota intrastate authority.

Paul Arpin Van Lines, through its various national contracts, is asked at times to arrange intrastate moves where we must utilize the services and authority of local area movers. Our preference, if course, is to utilize our contracted authorized agents, that have been qualified and trained in the policy and procedure of our company.

As such, and as our singular full service prime agent in the Minneapolis/St. Paul market, your procurement of authority would allow us to utilize your company for our valued customers within the State of Minnesota.

Sincerely,

Jeff Newcomer
Regional Vice President
Paul Arpin Van Lines

17. Applicant asserts that Arpin's letter, by itself, demonstrates a need for Applicant's expanded permit authority. Applicant points to past instances where some of the intervening carriers in this matter turned down offers to be Arpin's local agent as proof that there is room in the moving market for more competition.

Evidence Presented by Intervening Carriers

18. Douglas Harrison of Harco Moving & Storage (Harco) testified against the need for Applicant's expanded permit authority. Harco purchased its statewide authority in 1995 from Gritton Brothers Moving & Storage. The company has been an agent of Wheaton Van Lines since 1998, providing local, intrastate, interstate and international moving services.^[7] Currently, Harco is operating at 60-65% capacity of its employees and equipment. The company rarely turns down intrastate moves, and Mr. Harrison stated that Harco would be able to do business for Arpin if Arpin requested it. Mr. Harrison concluded that granting Applicant statewide authority would harm Harco's business by adding competition to a market that is already saturated.

19. Cas Prokop of John Archibald Moving, d/b/a Metcalf Moving/Storage Co., Inc. (Metcalf), also contests Applicant's application for expanded authority. Metcalf has been in business since 1919, and the company has statewide permit authority. Mr. Prokop explained how the moving business, along with the travel industry and many other businesses, has suffered since the terrorist attacks of September 11, 2001. Many individuals are moving themselves and renting trucks from self-service businesses like U-Haul and Rider. Mr. Prokop stated that if it weren't for Metcalf's strong interstate shipping business, the company's local and intrastate business would likely be bought out by another moving company. An analysis of Metcalf's revenue in February, 2003 and February, 2004, shows a 43.3% decline; a similar comparison of March, 2003 and 2004, reveals a 10.5% decline in revenue.^[8] Metcalf is down from 12 to 8 vehicles/trucks from last year. The number of full-time unionized employees at Metcalf has dropped from 14 to 2, resulting in more part-time employees and higher training costs. Mr. Prokop echoed Douglas Harrison's statements regarding Applicant's failure to demonstrate need to expand its authority, and he stated that Metcalf had the capacity to do Arpin's intrastate moving, in the event Arpin ever contacted Metcalf. Mr. Prokop suggests that Applicant's business would not be highly affected by not having full intrastate authority since much of Arpin's work is interstate jobs. Finally, he calls Arpin's estimate of intrastate job profits of \$75,000 to \$125,000 in the first year "unrealistic."

20. Douglas Bester testified about Bester Bros., his family's business since 1917. Each generation has purchased its statewide authority from the generation before. Mr. Bester testified that business has been slower since September, 2001, and that the company is currently operating at 60% capacity. On the day of the hearing, four of Bester Bros.'s 13 trucks were in use. Mr. Bester also suggested that \$75,000 to \$125,000 in intrastate profits was a "ridiculous" estimate, and commented that Bester Bros. could service Arpin's needs, just not in the capacity of an agent. He also objected to any assertion by Applicant that Arpin's March 31, 2004, letter to Applicant indicated any sort of a real contract between Arpin and Applicant. Mr. Bester's biggest concern involved Applicant's decision to apply for statewide authority rather than purchase it. Mr. Bester believes that Applicant is trying to shortcut the process and obtain his statewide authority the cheap and easy way, through application rather than purchase of another company's statewide authority.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Transportation have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 174.65.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Minnesota law provides that persons desiring to hold themselves out as a carrier of household goods or to engage in that business must first apply for and obtain a household goods mover permit from the Department.^[9]

4. Minnesota law requires that an applicant for household goods mover permit meet the following four conditions before the Commissioner can grant that authority:

- (a) That the petitioner is fit and able to conduct the proposed operations;
- (b) That the petitioner's vehicles meet the safety standards established by the department;
- (c) That the area to be served has a need for the transportation services requested in the petition;
- (d) That existing carriers have failed to prove that they offer sufficient services to fully and adequately meet the need.^[10]

5. The Department has further defined the term "fit and able" in its rules:

The term "fit and able" shall mean that the applicant is financially able to conduct the proposed business; that the applicant's equipment is adequate and properly maintained; that the applicant is competent, qualified, and has the experience necessary to conduct the proposed business; that the applicant is mentally and physically able to comply with rules and statutes of the commissioner of transportation.^[11]

6. Applicant has the burden of proving by a preponderance of the evidence that he has met the conditions described in subparagraphs (a), (b), and (c) of Conclusion No. 4. If that burden is met, then the intervening carriers have the burden of proving by a preponderance of the evidence that other carriers offer sufficient services to fully and adequately meet the need.^[12]

7. Applicant has not shown by a preponderance of the evidence that he is fit and able to conduct the proposed operations, that his vehicles meet the safety standards established by the Department, or that the area to be served has a need for the transportation services requested in the petition.

8. The existing carriers have shown that they offer sufficient services to fully and adequately meet the market's need.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner DENY Applicant's Petition for expansion of its household goods mover permit authority to include the entire State of Minnesota.

Dated: April 26, 2004

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded (2 tapes). No transcript prepared.

MEMORANDUM

While Applicant has shown that he has experience in the moving business, he has not demonstrated that he has the equipment, finances, or current business structure to support his business. He has not demonstrated how the business is conducted and how it will be conducted in the future. Most importantly, however, Applicant presented the March 31, 2004, letter from Paul Arpin Van Lines as his only proof of a need for Applicant's services throughout the state. The text of the letter does not confirm a contractual relationship.

There was no testimony or evidence from Arpin or any other shippers that they cannot get the services they need without Applicant's expanded permit authority. Minnesota law requires a showing of need in the area proposed to be served as a prerequisite to granting a permit.^[13] Applicant failed to make any meaningful showing of need. Accordingly, Applicant's petition should be denied.

^[1] Minn. Stat. § 221.121.

- ^[2] Testimony of Wayne Reeves.
- ^[3] Ex. 1, Amended Findings, Conclusions, and Order dated August 19, 2003.
- ^[4] Ex. 1.
- ^[5] Testimony of Wayne Reeves.
- ^[6] Ex. 1, Statement of Assets and Liabilities.
- ^[7] Testimony of Douglas Harrison.
- ^[8] Testimony of Cas Prokop.
- ^[9] Minn. Stat. § 221.121, subd. 6a.
- ^[10] Minn. Stat. § 221.121, subd. 1(b).
- ^[11] Minn. R. 7800.0100, subp. 4.
- ^[12] *Appeal of Signal Delivery Service, Inc.*, 288 N.W.2d 707, 712 (Minn. 1980).
- ^[13] See *Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board*, 370 N.W.2d 666, 670 (Minn. Ct. App. 1985).